

# The CURE

## Contract User's Resource for Excellence

*The "CURE" is a quarterly newsletter of the State Controller's Office*

Volume 6, Issue 4

November 2000

## News From The SCO

### A State Controller's Office Update

*By John Ivy, SCO*

#### ⇒ CCIT Meeting

The November CCIT Meeting will be held on Wednesday, November 15th from 9:00 a.m. to noon in Building 100 at Camp George West. For those of you not familiar with Camp George West, it is located just East of Golden on Old Golden Road. The address is 15055 So. Golden Road. A map was attached to the November 1999 issue of the CURE and can be found and printed from the SCO website. If you have questions about the meeting or its location, please call the SCU.

#### ⇒ State Privatization Program Transfer

The decision has been made to move the State Privatization Program from the SCO to the Division of Human Resources. Several meetings have been held to discuss the logistics of the move and determine how to maintain the outstanding level of customer service provided by the program during the transition period. Joi Simpson has been selected to replace Yvonne Anderson as program manager. Joi is somewhat familiar with the program because it was a function of the GSS Executive Director's Office when Joi was the Executive Director's Assistant.

The tentative target date for the transfer is January 1, but it may be effective at an earlier date, based on the success of the training.

State agencies should notice very little change since the contracts will still be routed through the SCO. The major change for state agencies will be a new point of contact, new mailing and e-mail addresses, and new numbers for both phone and fax. States agencies will be notified prior to the program transfer being made.

Yvonne has chosen to remain with the SCO's State Contract Unit where she will take a more active role in reviewing and executing state contracts, performing the compliance review for state contracts under \$25,000 and assisting state agencies in the area of contracts.

#### ⇒ State Contract Advisory Team (SCAT)

A new "grass roots" team has been formed with the full support of the CATF to suggest improvements in the state contracting process to the State Controller. SCAT was discussed at the last CCIT meeting and since then has held organizational meetings. Please see Deborah Nelson's article beginning on page 5. .

## Central Approvers Names and Numbers

NAME	PHONE #	FAX #
<b>State Controller's Office</b>		
<u>State Contract Unit:</u>		
Phil Holtmann	303-866-3809	303-866-3569
Bob Bowers	303-866-3820	303-866-3569
<u>Fiscal Rule Waivers and Statutory Violations:</u>		
John Ivy	303-866-3765	303-866-3569
<u>Privatization Program:</u>		
Yvonne Anderson	303-866-2862	303-866-3569
<u>Distribution and E-mail Updates:</u>		
Kevin Cruise	303-866-2127	303-866-3569
<b>Attorney General's Office:</b>		
David Kaye	303-866-5142	303-866-4139
Rod Wolthoff	303-866-5027	303-866-4139
<b>State Buildings and Real Estate Programs:</b>		
Carol Lieber (SBP)	303-866-3158	303-894-7478
Mike Karbach (REP)	303-866-4759	303-866-2201
Bob Marshall (REP)	303-866-2208	303-866-4367
<b>State Purchasing:</b>		
Kay Kishline	303-866-6181	303-894-7444
Monica Rahman	303-866-6155	303-894-7440

**NOTE:** You may e-mail any of the above by using the following format: **firstname.lastname@state.co.us**

## **Recital Section of State Contracts**

### **Funding Clause**

*By Phil Holtmann, SCO*

At the suggestion of several state agencies, the CATF has reviewed the use of the current funding language in the *Recital Section* of state contracts. Their questions centered around the need to include accounting information in state contracts, since the information was attached to the contracts when they were routed for approval.

The arguments presented for removing the accounting information from the body of the state contracts were that in most cases the information was left blank by the agency, the information was contained on the encumbrance document that accompanied the contract, and it was confusing to the vendor.

The arguments presented against removing the accounting information were that it is important information used by the CATF and may be of use to vendors. However, if the funding out clause, *Special Provision #2*, was invoked by an agency to terminate a contract, the CATF is convinced that the agency would have to prove that an appropriation or similar funding was not available to continue performance under a contract, not just that a specific appropriation code was no longer being used.

Based on input from state agencies and the CATF, the State Controller has agreed to a change in the funding language for state contracts meeting the following criteria. For all state contracts that contain a maximum amount payable **and** are accompanied by an encumbrance document the following language may be substituted for the current funding clause:

**“WHEREAS, Authority exists in the law and funds for the current fiscal year have been budgeted, appropriated, and otherwise made available and a sufficient uncommitted balance thereof remains available for encumbering and subsequent payment of this contract.”**

The current funding clause should be used and the accounting information furnished for all state contracts that do not contain a specific amount payable **and** do not require an encum-

brance to be recorded because of a State Fiscal Rule waiver. Please note that this requirement does not apply to task order master contracts.

## **City and County of Denver Contracts**

*By Rod Wolthoff, AGO*

Please note that an agreement was reached a few years ago with the City and County of Denver to delete the words “its employees and agents” from the *Special Provision #4*, the Indemnity Clause. When you are executing contracts with the City and County of Denver, either type out the Special Provisions and delete the appropriate words from the Indemnity Clause, or if using the Contract Manual’s two page edition, strike through the appropriate words and have both parties initial. It is unacceptable to “white-out” any of the words.

## **IMPORTANT!**

### **E-MAIL ADDRESSES**

The extended use of personal computers by state agencies and institutions has enabled better and faster communications throughout the state. In order to take advantage of this fact, the SCU has developed and will maintain an e-mail listing of all CCIT members. The purpose of this CCIT e-mail group is to distribute information in a more timely manner.

The SCU is now using its CCIT e-mail group to send out information to CCIT members, distribute policy drafts for comments, to remind members of the CCIT meeting, and to distribute the CURE.

Please contact Kevin Cruise at 303-866-2127 or e-mail him if you are not receiving the CURE or would like to be added to the CCIT e-mail group.

**kevin.cruise@state.co.us**

# Leases and Holdovers

*By Rod Wolthoff, AGO*

This article is written to describe an existing problem, suggest a policy modification, and get feedback from state agencies and institutions, particularly contract administrators.

Late leases continue to present problems for state agencies, landlords and the central contract approvers. Recently, a multi-year lease was received where the lease period ended June 30, 2000. There were no provisions for extending the lease. The lease had a holdover provision which transformed the lease into a month-to-month tenancy, if the state agency was permitted to continue occupancy. The holdover provision required the parties to adhere to the terms and conditions of the original lease. The parties entered the holdover period while negotiating the terms and conditions of the new lease. Several months went by before the new lease was signed and forwarded to the central approvers. The new lease contained the recently negotiated increased rental rates, which were retroactive back to July 1, 2000. While the agency continued to pay the rental holdover rates based upon the original lease agreement, they now wanted to reimburse the landlord for the incremental difference between the rate paid during the holdover period and the rate specified by the new lease. Instances like this always result in violations of CRS 24-30-202 and require retroactive approval by the State Controller.

The use of the holdover clause has been a recurring problem among state agencies. It presents problems like the ones described above. The use of the holdover clause and retroactive approval by the State Controller are remedies that should be used sparingly, rather than becoming an established practice. The goal for all state agencies should be to avoid statutory violations and process lease contracts in a timely manner. That means that state agencies should have a properly executed and approved lease or lease extension in place prior to the end of the current term of occupancy.

There are two options to help state agencies accomplish their goals, minimize risk, and avoid statutory violations.

- The first is to modify the holdover clause.
- The second is to eliminate retroactive dates and include a provision in the new lease for additional compensation or reimbursement.

Both options should give state agencies the flexibility to negotiate while preserving the status quo. This equates to a win-win situations for both the state agency and the landlord.

The **first** option is to modify the holdover clause. The standard holdover clause states:

*If Lessee shall fail to vacate the Premises upon expiration or sooner termination of this lease, Lessee shall be a month-to-month Lessee and subject to all the laws of the State of Colorado applicable to such tenancy. The rent to be paid by Lessee during such continued occupancy shall be the same being paid by Lessee as of the date of expiration or sooner termination. Lessor and Lessee each hereby agree to give the other party at least thirty days written notice prior to termination of this holdover tenancy.*

A modification to the second sentence of the clause would allow an increased rate during the holdover period. The new language would state:

***The rent to be paid by Lessee during such continued occupancy shall be one hundred and \_\_\_\_% (not to exceed 10 %) of the periodic rental rate being paid by the Lessee as of the date of expiration or sooner termination.***

An upper dollar limit needs to be established for the holdover period. One way for establishing the limit would be to make a policy decision as to the percentage increase. A second method would use the incremental rate increase used in the original lease. The new lease would be effective on a projected date after approval and execution by the State Controller or delegate.

***Concluded on page 4***

## Who Can Request a Fiscal Rule Waiver?

By John Ivy, SCO

This could be the shortest CURE article ever. The answer is simple. **Only the Chief Fiscal Officer can request a waiver of a State Fiscal Rule!**

Since there seems to be some confusion on this, let me take a paragraph or two and explain what State Fiscal Rule Waivers are and the process for requesting one. Normally, the need to request a State Fiscal Rule waiver for a contract takes one of three forms. The request is to waive State Fiscal Rule 3-1 in order to make an advance payment or to exceed the \$25,000 limit on purchase orders for services or to waive State Fiscal Rule 2-10 because some or all of the funds cannot be encumbered. These waiver requests are seldom denied, as long as the chief fiscal officer (CFO) endorses the request and sufficient justification is provided.

The need for a waiver is identified in the Administrative Hardship section of the State Fiscal Rules.

### **ADMINISTRATIVE HARDSHIP**

*Should any of these Fiscal Rules create undue administrative or financial hardship on a State Agency, a written request for exemption and/or alternative policy may be submitted by the State Agency's chief fiscal officer through the State Agency's chief executive officer to the State Controller.*

Problems arise when a request is received to waive a State Fiscal Rule from anyone other than the CFO of the state agency or institution. By not following the procedure established in the State Fiscal Rules, the contract approval (execution) is delayed. The CFO must be contacted and advised of the request and the request forward for their review and approval. Not all waiver requests are endorsed by the CFO, because not all waivers are necessary. That is why **only the Chief Fiscal Officer can request a waiver of a State Fiscal Rule!**

Please remember, if you are not the CFO of your state agency or institution you must send all State Fiscal Rule waiver requests to your CFO for review and approval. If the CFO concurs with the request, it will be forwarded to the SCO for approval. E-mail waiver requests are still preferred because they can be immediately reviewed and returned to the CFO.

(Please note that John Ivy in the SCO has been delegated the authority and given the responsibility to review and approve State Fiscal Rule waiver requests by the state controller. The CFO should address all waiver requests to him, whether in hard copy or e-mail. This will insure that the request is handled in a timely manner. His e-mail address is john.ivy@state.co.us and his telephone number, should you have questions is 303-866-3765.)

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## **Leases and Holdovers**

The **second** option would be to establish the new lease period effective for a projected date after the approval and execution of the lease by the State Controller. In this case, the holdover provisions of the old lease retained the old rates with no increases during the holdover period. The holdover provisions and rates of the old lease would apply up to the effective date of the new lease. The agency negotiates the new lease during the holdover period with the agreement that the increased rates would apply from the termination date of the old lease, the end of the holdover period. The new lease would contain a provision allowing the agency to reimburse the landlord after the execution of the new lease. The reimbursement would be in the form of a lump sum paid as consideration for holdover during the lease negotiations. The lump sum amount represents the incremental difference between the old and new rates multiplied by the number of months that the agency was in the holdover status. Agencies are reminded that the reimbursement amount must be paid out of a budget line for lease payments and is subject to all headnotes and footnotes contained in the Long Bill or other appropriations.

Please email your comments on the above to Phil Holtmann, phil.holtmann@state.co.us and Rod Wolthoff, rod.wolthoff@state.co.us by Friday, November 24, 2000.

# State Contracts Advisory Team

*By Deborah Nelson,*

At the last CCIT meeting, the Department of Human Services expressed an interest in developing a committee consisting of state employees at each of the state agencies and institutions who are directly involved in developing and processing state contracts. Since that time the Department of Human Services took the initial steps to set up this committee; the group, called the State Contracts Advisory Team (SCAT), has been formulated and meets monthly (except for the months of CCIT). The objective of this group is to promote best practices within the state contracting system through a network of experts.

At the first SCAT meeting members discussed their greatest challenges to successful contracting. Based on this discussion, six committees were formulated to investigate the common issues and recommend an approach to addressing these challenges. Listed below are the six committees:

1. **Information Sharing Committee** will focus on improving communication among the state departments.
2. **Liaison to the SCO Committee** will facilitate communication between the Central Approvers and the departments.
3. **Certification/Training Committee** will study and develop training topics at the department and program level which can supplement the current training provided by the State.
4. **Manual Committee** will recommend changes or request additional topics be added to the Colorado Contract and Procedures Manual.
5. **Privatization Committee** will learn about the transfer of the privatization program from the SCO to Human Resources and make recommendations about how the privatization statute should be applied.
6. **Process Reform Committee** will evaluate the overall state contracting process from a “big-picture” perspective and recommend improvements to the SCO.

In addition to the work being accomplished by the committees, a great portion of SCAT meetings are devoted to a roundtable discussion of current challenges each department is facing and formulating some alternatives for handling those issues. Our hope is that the roundtable discussion will not only help contract officers find solutions to the current difficulties but that the discussion will also result in an overall improvement in state contracts and the state contracting process. If you would like more information about SCAT, please contact Deborah Nelson, at (303)866-3671 or via email: [deborah.nelson@state.co.us](mailto:deborah.nelson@state.co.us)

The premise is this: everyone involved in the state contracting process is interested in doing it “right,” and in making it better, simpler and easier. However, there is problem of ‘perspective and priorities’--the perspective and priorities of the inexperienced individual who spends less than one percent of their time on contracts, the perspective and priorities of those who live and breath contracts, the perspective of the citizen from that of the program, and the perspective of the approver from that of the contract developer. An idea that may be wonderful to one, may be devastating to another. A lot can be said from having everyone on the same page. In order for this to occur, sometimes one needs to find a “translator” or pull out his/her *English-to-Legalese Dictionary*.

State employees start at a bit of a disadvantage because they operate under the false notion that because their contracts are between two parties that only two parties are involved. You look at the first page of the contract and see that “the State” and “the Contractor” are the parties to the contract and when you go to the notice provision you see two names-- one guy for the State, “Bob” and one guy for the vendor, “Sam.” What you don’t see within the four corners of the contract is that “the State” includes the citizens served, the program administrator who coordinates the service, the financial officer who holds the purse strings, the taxpayer who provides the purse, the procurement officer to procure the service, the program personnel who evaluate the vendor, the pro-

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gram administrator who creates the contract, the COFRS guru who creates the CLIN, VEND and encumbrance, the program manager who signs-off on the contract, the contract officers who review and correct the contract, the support staff who track and file the contract, and the Central Approvers who seal the deal. After all this, you run to the finish line with your executed contract in hand, only to get there and realize it's a mirage--you realize that this isn't a 10K but a marathon--now, as the program administrators say, "the real work begins." So a few more parties are added to the mix-- the contract manager, the accountants, the particular clients that need to be served, a whole slew of personnel provided by the vendor, and more often than not the vendor throws in a few subcontractors just to keep things interesting.

If Bob and Sam could do all of the negotiating, managing and make all of the decisions themselves, things would be pretty simple--but that is not the world of state contracting--there are multiple tiers of decision making and multiple persons who need to make those decisions. In addition, State employees need to worry about procurement rules, fiscal rules, personnel rules, accounting principles, regulations, department policies, statutes, and best business practices, not to mention a couple of constitutions. Given all these complexities, you would think that most state employees would find a short-cut to the finish line or scratch from the race altogether, but generally this is not the case, instead everyone is trying to get it right. For every one contract seen by the central approvers, the contract officer reviews five and the program administrator reviews fifteen and who knows how many the vendor developed.

The challenge is that "everyone" includes a lot of people, so what is right to one, is acceptable to another, is begrudgingly passable to another and is unsatisfactory to a fourth. Because of this, the State may need to add one more event to our 10K, turned-marathon, and that would be the pole-vault. We need flexibility. Pole-vaulters start low. They learn how to bend and how to give, and as they improve they can keep raising the bar a little higher. Some eat, sleep and breathe contracts and others are just trying to survive the process. The State can accommodate this by bending a little here and adjusting the grip there. The motto of one contract officer for one of her programs reflects this point, "They see how far away they can get from doing it right, without actually doing it wrong." When she gets their contracts, she grimaces at the idea of what she may find, but truth be told, the contract is fine; the State is fine. Sometimes she needs to correct some errors on behalf of the program, other times the program needs to correct the errors, but more often than not she just needs to find out why they did it the way they did, not because it matters but because she wants to understand. So she pulls out her Contract Officer-to-Program Administrator Translator (\$19.95 on E-Bay) and more often than not, she learns that they have a good reason for their approach, one that she had never considered. Is their contract ideal? No, not from the contract officer's perspective. But can she make it work? Yes. This is flexibility. Can she explain how the program can do it better in the future? Yes. This is improving the process.

The contract process is complicated and overwhelming and much of the work is performed by people who add a force majeure provision because it sounds "kinda cool," not because they know what it means. As anyone in the contracting process knows, there are a few thousand steps in that process, and that any single step could be improved to some degree. Add to that a plethora of approaches that could be taken to make these improvements and the State has a fairly enormous undertaking. To be successful, improvements in the contract process should be treated like a contract negotiation: let's assess what is actually important, prioritize, and then deal with those issues one at a time. Negotiators, just like pole-vaulters, start low until they establish trust; once trust has been established, they raise the bar and move to what truly matters. As these negotiations occur, each person in the process must recognize that there is a distinction between, "What is the best way we can do it?" and "What is sufficient?" Should the State strive for doing it the "best" way possible? Certainly, if it is the "best" way, there are superior characteristics to that approach, maybe it's more complete, maybe it's more effi-

## State Contract Advisory Team

cient. But as we strive to be the “best,” we need to keep in mind that each person in the contracting process has a different definition of what the word “best” means and that as long as anyone’s definition is sufficient, the State is fine. Just like any contract negotiation, the contract developers, the contract processors and the contract approvers need to work collaboratively to reach a resolution; each person in the process needs to consider everyone else’s perspective and determine what the State’s priorities actually are based on an analysis of everyone’s perspective. Everyone can be flexible on the minor points, so that each gets what they need when it really matters.

The goal of “improving the state contracting process” is a bit of a loaded statement. It is going to require everyone to contemplate their purpose in the process, their perspective, and their priorities. It’s going to require everyone to give, everyone to make an effort and everyone to follow-through. It’s going to require a lot, but as these improvements are contemplated no one should panic, no one should get overwhelmed. It is important to remember that as the State strives to have the best process, it already has a good, sufficient process.

Here’s the bottom line: Do state contracts have a purpose? Yes. Is it worth the effort to get them into place and manage them properly? Yes. Is the contract process complicated? Yes. Does the process have to be difficult? No. Is the State process fine? Yes. Can the process be better? Yes. Will it take a collaborative effort to make it better? Yes. Can it be done? Yes. Why? Because everyone involved in the state contracting process is interested in doing it “right,” and in making it better, simpler and easier. Improving the contract process is a marathon, with a few hurdles and an occasional pole-vault along the way. Everyone needs to find the track, stretch, and set their pace because its time to start training.

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*Please note that the above article reflects the SCAT’s viewpoint and it is not necessarily the viewpoint of the Controller, who sets policy and is responsible for the state contract process.*

## Contracting Statistics for the First Quarter Fiscal Year 2000/2001

By Phil Holtmann, SCU

The statistics from the CLIN Table for the first quarter of the year have been compiled by Sam Pappas of the SCO Reporting and Analysis Section. The statistics have been distributed to state agency controllers for their review and information. If you want to know the CLIN statistics for your state agency, please contact your controller and request a copy. The reports were distributed in mid-October and should be available to all state agency contract staff. If for some reason the statistics are not available from you controller, please give me a call.

During the first quarter of this year the SCU reviewed 1,361 state contracts and contract modifications. During the course of review, 303 errors were noted that had to be corrected prior to the contract or contract modification being executed. This is an error rate of 23%.

Last year during the same time period 1,161 contracts and contract modifications were reviewed by the SCU. A total of 371 errors were noted. This is an error rate of 32%.

Even though the total number of state contracts and contract modifications have increased by almost 10%, the error rate has decreased by approximately the same percentage.

All state agency staff involved in contracting and contract processing are to be congratulated on their efforts and can take pride in the fact that improvements are being made and less errors are being noted. Keep up the good work!

### Key to CURE Abbreviations

Attorney General’s Office	AGO
Central Approvers Task Force	CATF
Colorado Contract Improvement Team	CCIT
Division of Finance and Procurement	DFP
General Support Services	GSS
State Buildings and Real Estate Programs	SBP
State Contract Unit	SCU
State Controller’s Office	SCO
State Purchasing Office	SPO

**General Support Services  
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State Contracting Unit  
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## **CCIT Meeting AGENDA**



### **On the World Wide Web at :**

**[www.sco.state.co.us/](http://www.sco.state.co.us/)**

**CONTRACT PROCEDURES AND MANAGEMENT  
MANUAL  
[contract/contract.htm](http://www.sco.state.co.us/contract/contract.htm)**

**PRIVATIZATION PROGRAM PROCEDURES AND  
FORMS  
[private/private.htm](http://www.sco.state.co.us/private/private.htm)**

**CURE  
[cure/cure.htm](http://www.sco.state.co.us/cure/cure.htm)**

## **CCIT Meeting**

Wednesday, November 15, 2000

Camp George West – Golden, Colorado – Building 100

### **Agenda**

9:00-9:10	Facility Briefing	Phil Holtmann
9:10-10:30	Contact Wizard	Deborah Nelson
10:30-10:45	Break	
10:45-11:00	Routing Leases	Mike Karbach
11:00-11:15	Lease Holdover Clause	Mike Karbach
11:15-11:30	State Training Academy	Academy Staff
11:30-11:50	SCAT Initiatives	Harry McCabe
11:50-Noon	Questions	Phil Holtmann